

DOCUMENT RESUME

03272 - [A2233357]

[Protest against Failure of Agency to Provide Bid Form].  
S-189564. August 8, 1977. 2 pp.

Decision re: Oregon Wrestling Cultural Exchange; by Paul G.  
Dexblin, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government  
(306).

Organization Concerned: Department of Agriculture.

Authority: B-187543 (1977). B-185502 (1976). B-185544 (1977).  
B-187659 (1977). B-188387 (1977). B-187782 (1977).

The protester objected to the agency's failure to provide them a bid form and requested that they be reimbursed for certain "loss of income." The protest was dismissed without further development of the case since the contract award was not legally objectionable merely because a potential competitor was not furnished a bid form due to inadvertent, as opposed to deliberate, agency action. No legal basis exists for reimbursing a potential bidder for "loss of income" sustained because it did not receive a contract. (Author/SC)

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**DECISION**

*Human  
Proc II*

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-189564

DATE: August 8, 1977

MATTER OF: Oregon Wrestling Cultural Exchange

**DIGEST:**

Protest based on allegation that protester did not receive bid form because of contracting officer's negligence is dismissed without further development of case since contract award is not legally objectionable merely because potential competitor was not furnished bid form because of inadvertent, as opposed to deliberate, agency action. Moreover, no legal basis exists for reimbursing potential bidder for "loss of income" sustained because it did not receive contract.

Oregon Wrestling Cultural Exchange (Oregon) protests the failure of the Department of Agriculture to furnish it a bid form so that it could submit a bid for the operation of Camp Big Elk under the Youth Conservation Corps program and requests that it be reimbursed for certain "loss of income."

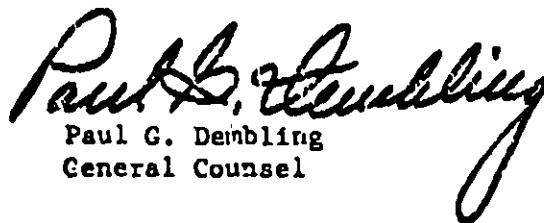
Oregon states that it anticipated award of the contract because of its location, facilities, and the background of its director, and had made tentative arrangements for operating the camp. It was only when it subsequently contacted the agency to inquire about the bid form that it learned the contract had already been awarded. Oregon attributes its failure to receive the bid form to "negligence" on the part of the contracting officer.

We have long held that a contract award is not legally objectionable merely because a potential competitor did not receive a solicitation because of some inadvertent, as opposed to deliberate, action by the procuring agency. See, e.g., Air Products and Chemicals, Inc., B-187543, January 12, 1977, 77-1 CPD 23; Michael O'Connor, Inc., B-185502, May 14, 1976, 76-1 CPD 326. While it is unfortunate that Oregon was not afforded an opportunity to bid, since Oregon attributes its failure to receive the bid form to "negligence" on the part of the contracting officer, rather than to any intentional attempt to exclude Oregon from competing, there is no legal basis upon which the protest can be sustained.

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Furthermore, with regard to the specific request for relief, Oregon requests reimbursement for loss of income to itself and loss of income to the gentleman who was to be hired to run the camp. We are aware of no basis for allowing the requested payments. While this Office will award bid preparation costs when it is clearly shown that a bidder or offeror otherwise entitled to award did not receive the award because of some improper or deliberate action by the contracting agency, see William F. Wilke, Inc., B-185544, March 18, 1977, 56 Comp. Gen. \_\_\_\_\_, 77-1 CPD 197; Bromfield Corporation, B-197659, May 5, 1977, 77-1 CPD 309, such costs clearly are not awardable in this case since Oregon neither submitted a bid (and therefore did not incur any costs of preparing a bid) nor was in line for award. See Morgan Business Associates, B-188387, May 16, 1977, 77-1 CPD 344.

Accordingly, we see no need to request an agency report or otherwise develop this matter and the protest is dismissed. See What-Mac Contractors, Inc. - Reconsideration, B-187782, January 14, 1977, 77-1 CPD 34.

  
Paul G. Deimling  
General Counsel